

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

REVISED ACL COMPLAINT NO. R5-2005-0524

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

VIRGINIA L. DRAKE, TRUSTEE, DRAKE REVOCABLE TRUST,
JAMES E. SIMMONS, DARWIN H. AND NINA R. SIMMONS, TRUSTEES,
AND
SIMMONS FAMILY TRUST

HUMBOLDT ROAD BURN DUMP AREA 7
ASSESSORS PARCEL NUMBER 018-390-018
BUTTE COUNTY

This Revised Administrative Civil Liability Complaint (hereafter Complaint) is issued to Virginia L. Drake, Trustee, Drake Revocable Trust, (hereafter “Drake”) James E. Simmons, Darwin H. and Nina R. Simmons, Trustees, and Simmons Family Trust (hereafter “Simmons”) (hereafter jointly Discharger) based on findings of failure to comply with California Water Code (CWC) Section 13304 and Section 13267. This Complaint is issued pursuant to CWC Sections 13350 and 13268(a) and (b), which authorize the imposition of Administrative Civil Liability.

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, (Water Board) finds, with respect to the Discharger’s acts, or failure to act, the following:

1. The Humboldt Road Burn Dump (HRBD) is a contiguous collection of 15 parcels containing, in whole or in part, waste from the disposal of municipal and/or commercial operations that contains waste as defined in CWC section 13050 and hazardous materials as defined in Health and Safety Code section 25260(d). Studies conducted under contract to the City of Chico of the HRBD characterized the waste, delineated the extent, and confirmed the need for further remediation on several properties. Studies show that the HRBD had waste containing lead exceeding hazardous waste levels in some locations and significant other hazardous and non-hazardous waste constituents that pose a threat to human health and the environment, including waters of the state.
2. The Executive Officer issued Cleanup and Abatement Order No. R5-2003-0707 (CAO) requiring cleanup of the HRBD. Most of the parcels that make up the HRBD have been cleaned up in compliance with the CAO, with the exception of two parcels referred to as Area 7 and Area 8. This Complaint addresses Area 7.

Assessors Parcel Number 018-390-018

3. Currently, Assessors Parcel Number (APN) 018-390-018 is 7.13 acres of essentially unimproved land near the intersection of Stilson Canyon and Humboldt Roads, in Chico, California. In the past, the land was part of a larger unimproved parcel; specifically, APN 018-390-018 was part of

APN 011-780-010, and before that was part of the 98.5-acre parcel APN 011-050-116. APN 018-390-018 is also referred to as Area 7 of the HRBD.

4. A battery recycling facility is suspected of having operated on APN 018-390-018 in the past. Historic aerial photographs taken of the suspected battery recycling facility indicate that from 1937 until 1962, small structures are visible that are consistent with that type of operation. No structures are visible in Area 7 in photographs taken in 1975.
5. On 23 March 2000, soil samples were collected from Area 7 and the analyses showed the presence of lead at concentrations ranging from 27.9 mg/Kg to 8340 mg/Kg, and pH ranging from 6.05 to 6.88 Units. The lead-containing soil constitutes waste as defined in CWC section 13050. The estimated volume of waste in Area 7 is 500 cubic yards.
6. APN 018-390-018 is currently owned by Virginia Drake, the Drake Revocable Trust, Darwin H. Simmons, Nina R. Simmons, James E. Simmons, and the Simmons Family Trust. It was formerly also owned by John D. Drake. On 21 February 2001, John D. Drake deeded his $\frac{1}{2}$ interest in the land to himself and Virginia L. Drake as trustees of the Drake Revocable Trust created on 23 January 2001. John D. Drake died on 22 November 2001. The Discharger, through the Drake Revocable Trust established with her deceased husband, John D. Drake, owns an undivided $\frac{1}{2}$ interest, Darwin H. Simmons and Nina R. Simmons, through the Simmons Family Trust, own an undivided $\frac{1}{4}$ interest, and James E. Simmons owns an undivided $\frac{1}{4}$ interest in APN 018-390-018. As described in Findings 3 through 6, the Discharger owns the land and has knowledge of the waste discharge. Based on the current record of the Water Board, it appears that none of the other named parties to the CAO, including the City of Chico, ever owned the land, or caused or permitted the discharge of waste to the land, that is the subject of this Complaint.
7. On 3 March 2003, Drake filed civil action in Butte County Superior Court (Case #129127) against Simmons to partition APN 018-390-018 and other land Drake owns with the Simmons. Court action on the case is pending.

Previous Enforcement

8. On 3 June 2003, the Water Board Executive Officer issued Cleanup and Abatement Order No. R5-2003-0707 (CAO), pursuant to California Water Code section 13304, to the reasonably identifiable parties responsible for the waste at the HRBD. The CAO defines HRBD by the following parcels and their respective owners: APN 002-180-095 and 011-030-137 (City of Chico); APN 011-030-136, 011-030-138, 011-030-139 (Thomas and Mary Fogarty Revocable Trust); APN 011-030-015 (George Scott Revocable Trust); APN 011-030-016 (Edmond and Julie Johnson); APN 002-180-089 (Donald and Yvonne Mulkey Family Trust); APN 002-180-084 (Fred and Helen Bartig Family Trust et al.; APN 002-180-086 (Marilyn Adams Revocable Trust et al.); APN 018-390-014 (Simmons Family Trust)(Area 8); APN 018-390-018 (Drake Revocable Trust et al.)(Area 7); APN 002-180-087 and 002-180-088 (Chico Development Corporation); and APN 002-180-083 (Pleasant Valley Assembly of God). In error, James E. Simmons was not named in that CAO. Therefore James E. Simmons is not subject to administrative civil liability for any violations of the CAO.

9. The CAO requires the City of Chico, Thomas and Mary Fogarty Revocable Trust, George Scott Revocable Trust, Edmond and Julie Johnson, Donald and Yvonne Mulkey Family Trust, Fred and Helen Bartig Family Trust et al., Marilyn Adams Revocable Trust et al., Simmons Family Trust, Drake Revocable Trust et al., Chico Development Corporation, Pleasant Valley Assembly of God, County of Butte, and North Valley Disposal Service to investigate, cleanup the waste, and abate the effects of the waste resulting from activities at the HRBD beginning 1 June 2004. The CAO does not specify a single responsible party to clean up the fifteen parcels, but requests each individual named in the CAO to submit written notification describing if they wish to maintain the City of Chico as lead responsible party and allow access to their respective properties for the purposes of investigation and cleanup or whether they intend to cleanup their own parcels.
10. On 13 February 2004, Drake submitted to Water Board staff a notice of intent to submit a separate Remedial Action Plan to comply with the CAO without indication of outside assistance or participation. On 15 March 2004, Drake submitted a status report committing to clean up the Area 7 waste. Subsequently, Drake notified Water Board and City of Chico staffs of Drake's intent to remove the Area 7 waste by summer 2004, if possible.
11. On 8 July 2004, Drake and other private parties submitted a Final Remedial Action Plan (RAP) for Humboldt Road Private Properties Operational Unit that includes Area 7 and seven other parcels. The approved remedial alternative for Area 7 is excavation and off-site disposal. The RAP proposes a time schedule to submit initial engineering design plans documents by 11 June 2004. On 13 July 2004, Water Board staff sent a letter to Drake, with copies to Simmons, approving the RAP and requesting Drake submit a Remedial Design and Implementation Plan (RDIP) on or before 13 August 2004. On 28 July 2004, Drake notified Water Board staff that if Drake's discussions with the City of Chico were unsuccessful, Drake intended to immediately develop and submit an RDIP and initiate permitting to allow remediation work to begin in spring 2005.
12. On 10 September 2004, Drake notified the Simmons of her intent to manage and obtain all necessary permits to cleanup the Area 7 waste during summer 2005. Drake proposed to allocate clean up costs based on the percentage of property ownership described in Finding 6 and committed to keep the total overall cleanup costs to a minimum. The Simmons indicated in writing they would pay Drake their fair share of the cleanup costs.
13. On 10 March 2005, Drake submitted an incomplete RDIP containing three cleanup alternatives for the Area 7 and Area 8 waste (for Area 8, see revised ACLC No. R5-2005-0525). Drake selected Alternative 3 (truck the 8,000 cubic yards of waste to a Class 1 landfill approximately 300 miles from the site), which is the cleanup alternative with the highest estimated total cost, \$1,400,000. Both Alternative 1 and 2 involved disposal of the waste in disposal sites at the HRBD with an estimated cost of \$200,000.
14. On 11 April 2005, the Simmons parties notified Drake that they agreed with the plan to cleanup the waste at the lower estimated total cost of \$200,000 (either Alternative 1 or 2). Drake did not object to the Simmons cleaning up Area 7 waste at the Simmons' expense. The Discharger did not clean up Area 7 in Summer 2005 when the HRBD disposal sites (either Alternative 1 or 2) were available to accept the waste.

15. On 15 April 2005, the Assistant Executive Officer, pursuant to delegation from the Executive Officer, issued an Order pursuant to CWC section 13267 to Drake, James E. Simmons, and the Simmons, requiring by 20 April 2005, submittal of a technical report and time schedule describing each regulatory agency permit or authorization necessary for work to begin on Area 7, the date they intend to apply for each permit or authorization, and the date they anticipated receiving the permit or authorization (15 April 2005 13267 Order). The technical report was not submitted.
16. On 19 April 2005, the Assistant Executive Officer, pursuant to delegation from the Executive Officer, issued an Order pursuant to CWC section 13267 to Drake, James E. Simmons, and the Simmons, requiring submittal of a technical report by 1 May 2005 to complete the RDIP (19 April 2005 13267 Order). The 13267 Order required the Discharger to submit a technical report describing the selected cleanup alternative and to submit a revised transportation plan for the selected cleanup alternative. The technical report was not submitted.
17. In September 2005, the Executive Officer issued the original Complaint to Drake for failures to obtain regulatory permits necessary for cleanup of Area 7 waste in Summer 2005, remove waste from Area 7 in Summer 2005, pay Invoice No. 42726, submit monthly status reports, submit a regulatory permitting technical report, and submit an off-site disposal alternative/revised transportation plan technical report. The original Complaint proposed that Drake pay \$100,000 in administrative civil liability.
18. The original Complaint named Drake but not to James E. Simmons or the Simmons because Drake had made clear to Water Board staff that Drake had assumed responsibility to cleanup the parcel, was authorized by the Simmons as part owners of the parcel, was in control of the cleanup activities as indicated by contact with permitting agencies, and had the financial ability, in part through an agreement with James E. Simmons and the Simmons, to cleanup the Area 7 waste.
19. At the 28 November 2005 public hearing, the Water Board considered a Draft Administrative Civil Liability Order for HRBD Area 7 and received testimony from staff, Drake, James E. Simmons, and the Simmons, and other designated parties. The Water Board declined to adopt the Order as proposed and continued the hearing for further consideration by the Executive Officer .
20. On 21 December 2005, the Discharger submitted payment for Invoice No. 42726. Drake, James E. Simmons, and Simmons have indicated to Water Board staff that they are cooperating to obtain necessary permits for cleanup of HRBD Area 7 in Summer 2006. .
21. Virginia Drake, the Drake Revocable Trust, Darwin H. Simmons, Nina R. Simmons, and the Simmons Family Trust are jointly and severally responsible for cleanup of Area 7 under the CAO. To date none of these parties have fully complied with the CAO. These parties and James E. Simmons have failed to comply with the 15 and 19 April 2005 13267 Orders.

Discharger Violations

Failure to Obtain Regulatory Permits

22. The CAO includes Required Action 17, which requires the Discharger to obtain all local and state permits and access agreements to fulfill the requirements of the CAO prior to beginning work in Summer 2005. On 28 July 2004, Drake notified Water Board staff of her intent to secure regulatory permits necessary to cleanup the Area 7 waste.
23. On 21 December 2004, Drake submitted an incomplete application for Authority to Construct with Butte County Air Quality Management District (BCAQMD). Drake did not complete the application. Subsequently, Drake notified BCAQMD staff to halt the project. Simmons also failed to complete an application to the BCAQMD.
24. On 28 March 2005, Water Board staff sent a certified letter to Drake and Simmons providing comments on the proposed RDIP and providing a notice of intent to pursue enforcement actions. The letter set forth a list of five required regulatory permits, reminded the parties of the compliance date for cleanup to begin in accordance with Drake's construction schedule, and requested the Discharger to submit copies of each complete permit application by 1 May 2005.
25. On 15 April 2005, the Water Board Assistant Executive Officer ordered the Discharger to submit pursuant to CWC section 13267 a technical report and time schedule, by 20 April 2005, describing each regulatory agency permit or authorization necessary for work to begin on Area 7, APN 018-390-018, the date they intend to apply for each permit or authorization, and the date they anticipated receiving the permit or authorization.
26. In response, Drake indicated that consultants were retained to initiate two regulatory permits; however, Drake subsequently notified these consultants to halt the project. Neither Drake nor Simmons submitted the technical report and time schedule by 20 April 2005 and copies of each complete permit application by 1 May 2005.

Failure to Implement Clean Up

27. The CAO includes Required Action 7, which requires the Discharger to submit, by 1 April 2004, 100 percent design plans and specifications for implementation of the Remedial Action Plan (RAP). Following the Water Board Executive Officer's approval of the Discharger's RAP, on 13 July 2004, Water Board staff sent a letter addressed to Drake, and copied to Simmons, requesting Drake to submit design plan and specifications (RDIP) on or before 13 August 2004 for implementing the Area 7 cleanup.
28. On 28 March 2005, to complete the RDIP, Water Board staff sent a letter to Drake and Simmons requesting them to submit a revised Confirmation Sampling Plan and Transportation Plan. Drake submitted the revised Confirmation Sampling Plan but failed to submit the revised

Transportation Plan by 1 May 2005. Simmons also failed to submit the revised Transportation Plan. Therefore, the Discharger failed to complete the RDIP.

29. The CAO includes Required Action 3, which requires the Discharger to begin cleanup no later than 1 June 2004. The 28 March 2005 letter provided the Discharger final notice of Water Board staff's intent to recommend that the Water Board Executive Officer pursue additional enforcement action if final cleanup of Area 7 waste, APN 018-390-018, is not completed by 15 August 2005. The Discharger failed to cleanup the Area 7 waste as of the date of this Complaint.
30. On 19 April 2005, the Water Board Assistant Executive Officer ordered the Discharger to submit pursuant to CWC section 13267 a technical report, by 1 May 2005, describing the selected off-site disposal alternative for the Area 7 waste and the revised transportation plan developed pursuant to the selected alternative. The Discharger failed to submit the technical report.

Failure to Comply with other Required Actions

31. The CAO includes Required Action 9, which requires the Discharger to submit, on the 15th of each month, a status report to describe progress in complying with the CAO, explain any problems with compliance or delays in the schedule, and provide and plan for returning the cleanup to compliance with the CAO. The Discharger submitted a limited number of monthly status reports from 15 March 2004 through 15 March 2005. The Discharger failed to submit monthly status reports since 15 April 2005.
32. The CAO includes Required Action 11, which requires any individual seeking to clean their parcel outside of an agreement with the City of Chico to act as the overall Responsible Party, to reimburse the Water Board for reasonable costs associated with oversight of the cleanup of that parcel. On 23 July 2005, the Discharger failed to submit payment to the State Water Resources Control Board SLIC Program (Invoice Number 42726) to reimburse Water Board staff oversight costs for the 1 January through 31 March 2005 billing period totaling three thousand four hundred fifteen dollars and twenty-two cents (\$3,415.22). On 12 December 2005, the Discharger submitted payment for Invoice Number 42726.

REGULATORY CONSIDERATIONS

33. The CAO states:
"If the Dischargers violate this Order, the dischargers may be liable civilly in a monetary amount provided by the California Water Code."
34. On 28 July 2004, in violation of the CAO, the Discharger failed to apply for the necessary permits to remove the Area 7 waste. Although the Discharger notified Water Board staff of its intent to secure regulatory permits necessary to cleanup the Area 7 waste on APN 018-390-018, the Discharger failed to submit complete timely applications to appropriate regulatory agencies so cleanup work could begin in accordance with the time schedule described in the RDIP.
35. On 31 May 2005, in violation of CAO No. R5-2003-0707, the Discharger failed to remove waste from Area 7, APN 018-390-018.

36. From 23 July 2005 through 21 December 2005, in violation of CAO No. R5-2003-0707, the Discharger failed to submit payment to reimburse the Water Board for reasonable costs associated with oversight of cleanup of APN 018-390-014 and 018-390-018.
37. CWC Section 13304(a) states:
- “Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharge where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up such waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”*
38. CWC Section 13304(c)(1) states:
- “If the waste is cleaned up or the effect of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”*
39. CWC Section 13350 states, in part:
- “(a) Any person who (1) violates any ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).*
- (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.*

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the discharge occurs.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327."

40. Since 28 July 2004, the Discharger failed to obtain the regulatory permits necessary for cleanup of Area 7 waste from APN 018-390-018 to begin and; therefore, as of 8 February 2006, the Drake and Simmons have been in violation of the CAO for 560 days. Since 15 August 2005, the Discharger failed to remove waste from Area 7 and; therefore, as of 8 February 2006, the Drake and Simmons have been in violation of the CAO for 177 days. From 23 July 2005 through 12 December 2005, the Discharger failed to submit payment to reimburse Water Board staff oversight costs for APN 018-390-014 and 018-390-018, and; therefore, the Drake and Simmons violated the CAO for 142 days. The maximum liability that can be imposed by the Water Board under CWC Section 13350 is \$5,000 for each day and the minimum liability than can be imposed is \$100 for each day. Therefore, the maximum administrative liability is \$4,395,000 ((560 + 177 + 142) days times \$5,000 per day) and the minimum liability is \$87,900 ((560 + 177 + 142) days times \$100 per day).
41. Since 15 April 2005, in violation of CAO No. R5-2003-0707, the Drake and Simmons failed to submit status reports on the 15th of each month.
42. Since 20 April 2005, in violation of CWC section 13267 and CAO No. R5-2003-0707, the Drake and Simmons failed to submit a regulatory permitting technical report for the Area 7 waste.
43. Since 1 May 2005, in violation of CWC section 13267 and/or CAO NO. R5-2003-0707, the Discharger failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste.
44. CWC Section 13268 states:

"Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

45. Since 15 April 2005, the Discharger failed to submit monthly status reports and; therefore, as of 8 February 2006, the Discharger has been in violation of CWC Section 13267 for 299 days. Since 20 April 2005, the Discharger failed to submit a regulatory permitting technical report for the Area 7 waste and; therefore, as of 8 February 2006, the Discharger has been in violation of CWC Section 13267 for 294 days. Since 1 May 2005, the Discharger failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste and; therefore, as of 8 February 2006, the Discharger has been in violation of CWC Section 13267 for 283 days. The maximum liability that can be imposed by the Water Board under CWC Section 13268 is \$1,000 for each day. Therefore, the maximum administrative civil liability is \$644,000 ((299 + 294 + 283) days times \$1,000 per day).
46. As described in Findings 40 and 45, the maximum administrative civil liability allowed pursuant to CWC Section 13350 and 13267 is \$5,039,000 (\$4,395,000 + \$644,000). The minimum administrative liability allowed pursuant to CWC Section 13350 is \$87,900. CWC Section 13267 does not provide for a minimum liability.
47. CWC Section 13327 states:
“In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”
48. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

VIRGINIA L. DRAKE, TRUSTEE, DRAKE REVOCABLE TRUST, JAMES E. SIMMONS, DARWIN H. AND NINA R. SIMMONS, TRUSTEES, AND SIMMONS FAMILY TRUST ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Water Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of one hundred thousand dollars (\$100,000). The amount of the liability proposed is greater than the minimum allowed liability required under Section 13350 (e)(1)(B), and takes into account the factors set forth in CWC Section 13327 cited in Finding No. 47, and including consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on 16 and/or 17 March 2006 unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.

3. If a hearing is held, the Water Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*), to the Water Board's office at 415 Knollcrest Drive, Suite 100, Redding, CA 96002, **by 13 March 2006.**

KENNETH D. LANDAU, Acting Executive Officer

10 February 2006
(Date)

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Virginia L. Drake, Trustee, Drake Revocable Trust (hereinafter “Discharger”) in connection with Revised Administrative Civil Liability Complaint No. R5-2005-0524 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and.
4. I agree to remit payment for the civil liability imposed in the amount of one hundred thousand dollars (\$100,000) by check, which contains a reference to “Revised ACL Complaint No. R5-2005-0524” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*” I understand that this Waiver will not be effective if all parties do not waive their right to a hearing and that the parties are jointly and severally liable for the entire amount of one hundred thousand dollars (\$100,000).
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
7. I understand that this Waiver will not be effective if all parties named in this Complaint do not waive their right to a hearing and, in that event, a hearing before the Central Valley Water Board will be held within 90 days of the date of this revised Complaint.

(Name)

(Title)

(Date)

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent James E. Simmons (hereinafter “Discharger”) in connection with Revised Administrative Civil Liability Complaint No. R5-2005-0524 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and.
4. I agree to remit payment for the civil liability imposed in the amount of one hundred thousand dollars (\$100,000) by check, which contains a reference to “Revised ACL Complaint No. R5-2005-0524” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*” I understand that this Waiver will not be effective if all parties do not waive their right to a hearing and that the parties are jointly and severally liable for the entire amount of one hundred thousand dollars (\$100,000).
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
7. I understand that this Waiver will not be effective if all parties named in this Complaint do not waive their right to a hearing and, in that event, a hearing before the Central Valley Water Board will be held within 90 days of the date of this Complaint.

(Name)

(Title)

(Date)

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Darwin H. and Nina R. Simmons, Trustees, Simmons Family Trust (hereinafter “Discharger”) in connection with Revised Administrative Civil Liability Complaint No. R5-2005-0524 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and.
4. I agree to remit payment for the civil liability imposed in the amount of one hundred thousand dollars (\$100,000) by check, which contains a reference to “Revised ACL Complaint No. R5-2005-0524” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*” I understand that this Waiver will not be effective if all parties do not waive their right to a hearing and that the parties are jointly and severally liable for the entire amount of one hundred thousand dollars (\$100,000).
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)